

**EXHIBIT 9**

FEB-01-07 01:28PM FROM-DONAHUE - GALLAGHER C

510 832 1486

T-976 P.005/012 F-892

**SUMMONS  
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**HERBERT M. GOTTLIEB, an individual, and  
DOES 1 through 50, inclusive**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTA DEMANDANDO EL DEMANDANTE):**NACIO SYSTEMS, INC., a Nevada  
CorporationFOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

FEB - 1 2007

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

MARIN COUNTY SUPERIOR COURT  
3501 Civic Center Drive  
San Rafael, CA 94903

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
William R. Hill  
Ariana Seldman Hawbecker  
DONAHUE GALLAGHER WOODS LLP  
300 Lakeside Drive, Suite 1900  
Oakland, California 94612

DATE: FEB - 1 2007

(Fecha)

CASE NUMBER:  
(Número del Caso):

CV 0709774

(510) 451-0544

Clerk

(Secretario)

B. JONES

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

**NOTICE TO THE PERSON SERVED: You are served**

- ☒ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify):

- under:
- ☒ CCP 416.10 (corporation)
  - ☐ CCP 416.20 (defunct corporation)
  - ☐ CCP 416.40 (association or partnership)
  - ☐ other (specify):

- ☐ CCP 416.60 (minor)
- ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.90 (authorized person)

- ☐ by personal delivery on (date):

Page 1 of 1

FEB-01-07 01:30PM FROM-DONAHUE - GALLAGHER C

510 832 1486

T-976 P.007/012 F-892

1 WILLIAM R. HILL, #114954  
2 ARIANA SELDMAN HAWBECKER, #190506  
3 DONAHUE GALLAGHER WOODS LLP  
4 Attorneys at Law  
5 300 Lakeside Drive, Suite 1900  
6 Oakland, California 94612-3570  
7 P.O. Box 12979  
8 Oakland, California 94604-2979  
9 Telephone: (510) 451-0544  
10 Facsimile: (510) 832-1486

11 Attorneys for Plaintiff  
12 NACIO SYSTEMS, INC., a Nevada  
13 corporation

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 IN AND FOR THE COUNTY OF MARIN

16 NACIO SYSTEMS, INC., a Nevada  
17 Corporation,

18 Plaintiff,

19 v.

20 HERBERT M. GOTTLIEB, an individual;  
21 and DOES 1 through 50, inclusive,

22 Defendants.

CASE NO.

CV070474

COMPLAINT FOR INTENTIONAL  
INTERFERENCE WITH PROSPECTIVE  
ADVANTAGE AND BREACH OF  
FIDUCIARY DUTY.

BY FAX

1 WILLIAM R. HILL, #114954  
2 ARIANA SELDMAN HAWBECKER, #190506  
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6 Attorneys for Plaintiff  
7 NACIO SYSTEMS, INC., a Nevada  
corporation

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF MARIN

11  
12 NACIO SYSTEMS, INC., a Nevada  
Corporation,

13 Plaintiff,

14 v.

15 HERBERT M. GOTTLIEB, an individual;  
16 and DOES 1 through 50, inclusive,

17 Defendants.

CASE NO.

**COMPLAINT FOR INTENTIONAL  
INTERFERENCE WITH PROSPECTIVE  
ADVANTAGE AND BREACH OF  
FIDUCIARY DUTY**

1 Nacio Systems, Inc., a Nevada corporation ("Nacio"), for its complaint against defendant  
2 Herbert M. Gottlieb ("Gottlieb") and Does 1 through 50, inclusive, and each of them (hereinafter  
3 collectively referred to as "Defendants"), alleges as follows:

4 **THE PARTIES**

5 1. Nacio, a Nevada corporation with its principal place of business in Novato,  
6 California, is a technology company that provides web hosting, co-location, network security, and  
7 high-capacity data storage for corporate customers. Nacio is a wholly-owned subsidiary of  
8 Encompass Holdings, Inc., a Nevada corporation.

9 2. Attest Systems ("Attest"), a division of Nacio, is a computer auditing company  
10 that provides information technology asset discovery and management tools for small, medium,  
11 and large enterprises, as well as government agencies worldwide.

12 3. Defendant Gottlieb is an individual residing in Novato, California. From on or  
13 around December 1, 2004 to on or around February 2006, Gottlieb was President of Attest. In  
14 that capacity, Gottlieb was responsible for directing the sales and partner programs of Attest.

15 4. Nacio is ignorant of the true names and capacities of the defendants sued herein as  
16 Does 1-50, inclusive, and therefore sues said defendants by such fictitious names. Nacio will  
17 seek leave to amend this complaint to allege their true names and capacities when the same have  
18 been ascertained. Nacio is informed and believes that each of the defendants fictitiously named is  
19 legally responsible in some manner for the events and happenings alleged herein, and has legally  
20 and proximately caused injury and damages to Nacio as hereinafter alleged.

21 5. Nacio is informed and believes that at all times herein mentioned defendants, and  
22 each of them, were the agents, servants, and/or employees of each of the remaining defendants,  
23 and in doing the things alleged hereinafter, were acting within the course and scope of said  
24 agency, service and/or employment. Nacio is further informed and believes that each of the acts  
25 and/or omissions alleged to have been done by the defendants, or any of them, were done with the  
26 consent, knowledge and ratification of each of the remaining defendants.

**PRELIMINARY ALLEGATIONS**

6. In or about March 2005, Nacio was involved in discussions with a potential customer, PS'Soft, regarding the sales and licensing of Attest products and services to assist PS'Soft in performing detailed audits. Gottlieb was part of these negotiations.

7. At the same time that Nacio was finalizing the terms of a sales and licensing agreement with PS'Soft, Defendants, and each of them, interfered with Nacio's negotiations with PS'Soft and caused PS'Soft to cease contract negotiations with Nacio. These actions by Defendants, and each of them, were done with the specific intent to cause economic injury to Nacio by interfering with Nacio's potential sales and licensing revenues.

8. Nacio is informed and believes and thereon alleges that Gottlieb, while still President of Attest, enticed PS'Soft to reject a contract with Nacio and instead enter into a direct contract with Gottlieb to provide the products and services requested by PS'Soft. Nacio is further informed and believes that Gottlieb was personally paid by PS'Soft to provide products and services similar to those offered by Attest, for PS'Soft, while Gottlieb was still President of Attest.

9. Nacio is informed and believes and thereon alleges that, as a result of Defendants' actions, and each of them, PS'Soft ceased negotiations with Nacio and entered into a contract with Gottlieb to provide the products and services offered by Attest. On information and belief, Gottlieb could not have provided those products and services to PS'Soft without violating Nacio's intellectual property rights as Defendants would have been required to use Nacio's proprietary software products to provide the services required by PS'Soft.

10. Gottlieb, in entering into a direct contract with PS'Soft for benefit of himself personally and misappropriating Nacio's trade secrets and intellectual property while still President of a division of Nacio, breached his fiduciary duties to Nacio.

11. On information and belief, Defendants, and each of them, also interfered with Nacio's relationship with other current and potential customers of Attest. For example, Gottlieb, while still employed by and serving as President of Attest, re-directed Attest's current and



1 potential customers to PS'Soft, thereby encouraging those customers to do business with PS'Soft  
2 rather than with Attest.

3 **FIRST CAUSE OF ACTION**  
4 **(Intentional Interference with Prospective Economic Advantage - Against All Defendants)**

5 For a First Cause of Action against defendant Gottlieb and Does 1-50, inclusive, and each  
6 of them, Nacio alleges as follows:

7 12. Nacio realleges and incorporates by herein by this reference each and all of the  
8 allegations in paragraphs 1 through 11, above, as though fully set forth.

9 13. Nacio was in an economic relationship with PS'Soft and other current and  
10 potential customers, which relationships were likely to have resulted in economic benefits to  
11 Nacio, including the receipt of monies from PS'Soft and other current and potential customers  
12 from the sale of Attest's products and services.

13 14. Defendants, and each of them, knew of the economic relationship between Nacio  
14 and PS'Soft and others at the time Defendants, and each of them, took the actions recited above.

15 15. On information and belief, the acts of Defendants, and each of them, were  
16 wrongful in that Gottlieb unfairly used his position as President of Attest and his knowledge of  
17 Nacio's pricing and customer contacts to profit Defendants, and each of them, at the expense of  
18 Nacio.

19 16. The acts of Defendants, and each of them, were also wrongful in that Defendants,  
20 and each of them, engaged in said acts with the purpose and intent of misappropriating Nacio's  
21 trade secrets and intellectual property. Defendants, and each of them, further sought to  
22 misappropriate Attest's' trade secrets and intellectual property by taking away its key employees.  
23 For example, Gottlieb offered to have PS'Soft pay an Attest employee fifty-five dollars (\$55.00)  
24 per hour to do work for PS'Soft provided that employee agreed to "kick-back" twenty dollars  
25 (\$20.00) per hour to Gottlieb.

26 17. As a proximate result of the acts of Defendants, and each of them, as hereinabove  
27 alleged, Nacio's economic relationships with PS'Soft and other current and potential customers  
28 were disrupted and harmed, and Nacio has lost and will continue to lose income and other

1 economic benefits, all in an amount in excess of Twenty-five Thousand Dollars (\$25,000.00), the  
2 precise amount of which Nacio will prove at trial.

3 18. The actions of Defendants, and each of them, were willful and malicious, and  
4 taken in conscious disregard of Nacio's rights, entitling Nacio to exemplary and punitive  
5 damages.

6 WHEREFORE, Plaintiff prays for judgment as set forth below.

7 **SECOND CAUSE OF ACTION**  
8 **(Breach of Fiduciary Duty – Against Defendant Gottlieb)**

9 For a Second Cause of Action against defendant Gottlieb, Nacio alleges as follows:

10 19. Nacio realleges and incorporates by herein by this reference each and all of the  
11 allegations in paragraphs 1 through 17, above, as though fully set forth.

12 20. At all times mentioned herein Gottlieb was President of Attest.

13 21. In acting as described above, Gottlieb did not exercise the care required of officers  
14 of Nacio in that he used his position as President of Attest to financially benefit himself and  
15 another company and harm Nacio by diverting business that should have gone to Attest.

16 22. As a proximate result of the acts of Gottlieb as herein above alleged, Nacio has  
17 been damaged in an amount in excess of Twenty-Five Thousand Dollars (\$25,000), the precise  
18 amount of which Nacio will prove at trial.

19 23. The actions of Gottlieb were willful and malicious, and taken in conscious  
20 disregard of Nacio's rights, entitling Nacio to exemplary and punitive damages.

21 WHEREFORE, Plaintiff prays for judgment as set forth below.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment as follows:

24 **On the First Cause of Action:**

25 1. For compensatory damages in excess of Twenty-five Thousand Dollars  
26 (\$25,000.00), according to proof;

27 2. For exemplary and punitive damages;

28 3. For its costs of suit incurred herein; and



1 4. For such other and further relief as the court may deem just and proper.

2 On the Second Cause of Action:

3 1. For compensatory damages in excess of Twenty-five Thousand Dollars  
4 (\$25,000.00), according to proof;

5 2. For exemplary and punitive damages;

6 3. For its costs of suit incurred herein; and

7 4. For such other and further relief as the court may deem just and proper.

8  
9 Dated: January 29, 2007

DONAHUE GALLAGHER WOODS LLP

10  
11 By: 

William R. Hill

12 Attorneys for Plaintiff NACIO SYSTEMS, INC., a  
13 Nevada corporation.  
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